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U.S. Citizenship  
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**G3**

FILE:

Office: MIAMI

Date:

**JUN 9 2004**

IN RE:

Obligor:

Bonded Alien:

IMMIGRATION BOND:

Bond Conditioned for Voluntary Departure under § 240B of the Immigration  
and Nationality Act, 8 U.S.C. § 1229c

ON BEHALF OF OBLIGOR:

**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The voluntary departure bond in this matter was declared breached by the District Director, Miami, Florida, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The record indicates that on July 29, 2002, the obligor posted a \$500.00 bond conditioned for the alien's voluntary departure. An order of the immigration judge (IJ) dated July 24, 2002, was issued granting the alien voluntary departure in lieu of removal on or before September 20, 2002. The bonded alien filed a motion to reconsider before the Executive Office for Immigration Review (EOIR). On November 8, 2002, the EOIR denied the alien's motion to reconsider. On November 13, 2002, the district director concluded the bond had been breached. The alien has failed to depart.

The record reflects that the bonded alien appealed the November 8, 2002 decision to the Board of Immigration Appeals (BIA). On February 5, 2004, the BIA dismissed the alien's appeal and granted the alien voluntary departure within 30 days from the date of the order.

On appeal, counsel for the obligor requests that the breach be rescinded because the alien's motion to reconsider was still pending at the time the bond was breached. Counsel asserts that the bonded alien will appeal the EOIR's decision.

The regulation at 8 C.F.R. § 1003.6(a) provides that a decision shall not be executed during the time allowed for filing an appeal. Pursuant to 8 C.F.R. § 1003.38(b), an appeal may be filed with the BIA within 30 days after the the IJ's decision. In the instant case, ICE did not wait the required 30 days prior to issuing its breach decision. As such, the breach decision dated November 13, 2002 is not valid.

**ORDER:** The appeal is sustained. The field office director's decision declaring the bond breached is rescinded and the bond is continued in full force and effect.